

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

UNITED STATES OF AMERICA)
)
)
)
vs.) CRIMINAL NO. 9:22-cr-00658
)
)
)
RUSSELL LUCIUS LAFFITTE)

GOVERNMENT'S PROPOSED JURY CHARGES

The United States of America, by and through the undersigned counsel, submits the attached proposed jury instructions for the Court's consideration. The United States respectfully requests the opportunity to propose additional instructions as may be required by evidence introduced at trial.

Respectfully submitted,

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1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 1**

2 **Duties of Jury to Find Facts and Follow Law**

3 Members of the jury, now that you have heard all the evidence and the arguments of the
4 lawyers, it is my duty to instruct you on the law that applies to this case. When I have finished,
5 you will go to the jury room and begin your discussions – what we call your deliberations.

6 These instructions will be in three parts. The first part will detail the instructions on general
7 rules that define and control the jury's duties. The second part will explain the instructions that
8 state the rules of law you must apply, i.e., what the Government must prove to make the case. And
9 the third part will provide some rules for your deliberations. You will have a written copy of these
10 instructions on the law with you in your jury room during your deliberations. You will also have
11 all of the exhibits that were received into evidence with you.

12 It is your duty to find the facts from all the evidence in the case. To those facts you must
13 apply the law as I give it to you. You are bound to accept the rules of law as I give them to you
14 whether you agree with them or not. And you must not be influenced by any personal likes or
15 dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on
16 the evidence before you and according to the law. You will recall that you took an oath promising
17 to do so at the beginning of the case.

18 In following my instructions, you must follow all of them and not single out some and
19 ignore others; they are all equally important. And you must not read into these instructions or into
20 anything I have said or done. I make no suggestion as to what verdict you should return – that is a
21 matter entirely for you to decide.

22
23 Authority: *United States v. Kenyada Jaqu*, No. 3:19-cr-00302-JMC, Doc. No. 233 at 1 (D.S.C.
24 Oct. 21, 2020).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 2**

2 **Publicity During Trial**

3 Your verdict must be based solely on the evidence presented in this courtroom in
4 accordance with my instructions. You must completely disregard any report that you have read in
5 the press or online, seen on television, or heard on the radio. Indeed, it would be unfair to consider
6 such reports, since they are not evidence and the parties have no opportunity to contradict their
7 accuracy or otherwise explaining them away. In short, it would be a violation of your oath as jurors
8 to allow yourselves to be influenced in any manner by such publicity.

9
10 Authority: L. Sand, *et al.*, Modern Federal Jury Instructions: Criminal, Instruction 2-17 (2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 3**

2 **Presumption of Innocence**

3 The law presumes a defendant to be innocent, and the presumption of innocence alone is
4 sufficient to acquit a defendant, unless the jury is satisfied beyond a reasonable doubt of the
5 defendant's guilt after careful and impartial consideration of the evidence introduced at trial.

6 A defendant has no obligation to establish his innocence. The burden is always upon the
7 prosecution to prove guilt beyond a reasonable doubt, and this burden never shifts to the defendant.

8 If the jury, after careful and impartial consideration of all the evidence, has a reasonable doubt that
9 a defendant was guilty of the charge under consideration, you must find that defendant not guilty
10 of that charge.

11 If, on the other hand, the jury finds that the evidence is sufficient to overcome the
12 presumption of innocence and to convince you beyond a reasonable doubt of the guilt of the
13 defendant of the charge under consideration, it must find the defendant guilty of that charge.

14
15 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
16 *South Carolina*, § II.G (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 4**

2 **Burden of Proof (Reasonable Doubt)**

3 The Government must prove each element of each of the crimes charged to each and every
4 one of you beyond a reasonable doubt. If the Government fails to prove an element beyond a
5 reasonable doubt, then you must find that that element has not been proven and find the defendant
6 not guilty of that charge. While the Government's burden of proof is a strict and heavy burden, it
7 is not necessary that it be proved beyond all possible doubt. It is only required that the
8 Government's proof exclude any reasonable doubt concerning that element. The defendant never
9 has the burden of disproving the existence of anything that the Government must prove beyond a
10 reasonable doubt. The burden is wholly upon the Government. The law does not require the
11 defendant to produce any evidence.

12
13 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
14 *South Carolina* § II.B (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 5**

2 **Evidence**

3 The evidence from which you are to decide what the facts are consists of: (1) the sworn
4 testimony of witnesses, both on direct and cross-examination, regardless of who called the witness;
5 (2) the exhibits that have been received into evidence; and (3) any facts to which all the lawyers
6 have agreed to stipulate.

7
8 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
9 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
10 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.
11

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 6**

2 **What Is Not Evidence**

3 In reaching your verdict, you may consider only the testimony and exhibits received into
4 evidence. Certain things are not evidence and you may not consider them in deciding what the
5 facts are. I will list them for you:

6 1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses.
7 What they have said in their opening statements, closing arguments, and at other times is intended
8 to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ
9 from the way the lawyers have stated them, your memory of them controls.

10 2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their
11 clients to object when they believe a question is improper under the rules of evidence. You should
12 not be influenced by the objection or by the Court's ruling on it.

13 3) Testimony that has been excluded or stricken, or that you have been instructed to
14 disregard, is not evidence and must not be considered. In addition, if testimony or exhibits have
15 been received only for a limited purpose, you must follow the limiting instructions I have given.

16 4) Anything you may have seen or heard when the court was not in session is not evidence.
17 You are to decide the case solely on the evidence received at the trial.

18 5) The Indictment is not evidence. It is given to you solely as an aid in following the Court's
19 instructions and the arguments of counsel.

20
21 Adapted From: United States District Court for the District of South Carolina, "Jury Instructions
22 – Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
23 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf;
24 Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of South*
25 *Carolina, § II.E (2020 Online Edition)*.

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 7**

2 **Direct and Circumstantial Evidence**

3 There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof
4 of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is,
5 proof of a chain of facts from which you could find that another fact exists, even though it has not
6 been proved directly. You are entitled to consider both kinds of evidence. The law permits you to
7 give equal weight to both, but it is for you to decide how much weight to give to any evidence. It
8 is for you to decide whether a fact has been proved by circumstantial evidence. In making that
9 decision, you must consider all the evidence in the light of reason, common sense, and experience.

10
11 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
12 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
13 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 8**

2 **Credibility of Witnesses**

3 In deciding what the facts are, you must consider all the evidence. In doing this, you must
4 decide which testimony to believe and which testimony not to believe. You may disbelieve all or
5 any part of any witness's testimony. In making that decision, you may take into account a number
6 of factors including the following:

7 1) Was the witness able to see, or hear, or know the things about which that witness
8 testified?

9 2) How well was the witness able to recall and describe those things?

10 3) What was the witness's manner while testifying?

11 4) Did the witness have an interest in the outcome of this case or any bias or prejudice
12 concerning any party or any matter involved in the case?

13 5) How reasonable was the witness's testimony considered in light of all the evidence in
14 the case?

15 6) Was the witness's testimony contradicted by what that witness has said or done at
16 another time, or by the testimony of other witnesses, or by other evidence?

17 In deciding whether or not to believe a witness, keep in mind that people sometimes forget
18 things. You need to consider therefore whether a contradiction is an innocent lapse of memory or
19 an intentional falsehood, and that may depend on whether it has to do with an important fact or
20 with only a small detail. These are some of the factors you may consider in deciding whether to
21 believe testimony.

22
23 Adapted From: United States District Court for the District of South Carolina, "Jury Instructions
24 – Preliminary and Boilerplate, Judge Richard Mark Gergel," available at

1 [https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.](https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf)
2 pdf.

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 9**

2 **Impeachment – Inconsistent Statements or Conduct (If Needed)**

3 The testimony of a witness may be discredited or impeached by showing that he or she
4 previously made statements that are inconsistent with his or her present testimony. The earlier
5 contradictory statements are admissible only to impeach the credibility of the witness, and not to
6 establish the truth of these statements. It is the province of you, the jury, to determine the weight,
7 if any, to be given the testimony of a witness who has been impeached.

8
9 Authority: 1A O'Malley et al., Federal Jury Practice and Instructions § 15.06 (6th ed.).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 10**

2 **Credibility of Law Enforcement Witnesses**

3 In considering the testimony of a witness an agent of the Government, you may not give
4 more weight to the testimony of an agent of the Government than you give to the testimony of
5 other witnesses for the mere reason that the witness is an agent of the Government.

6
7 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 8 (D.S.C.
8 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 11**

2 **Opinion Evidence, Expert Witness**

3 You have heard testimony from persons described as experts. Persons who, by education
4 and experience, have become experts in some field may state their opinion on matters in that field
5 and may also state their reasons for the opinion. Expert opinion testimony should be judged just
6 as any other testimony. You may accept it or reject it, and give it as much weight as you think it
7 deserves, considering the witness's education and experience, the reasons given for the opinion,
8 and all the other evidence in the case.

9
10 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
11 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
12 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.
13

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 12**

2 **Charts and Summaries Received in Evidence**

3 Certain charts and summaries have been received into evidence to illustrate facts brought
4 out in the testimony of some witnesses. Charts and summaries are only as good as the underlying
5 evidence that supports them. You should therefore give them only such weight you think the
6 underlying evidence deserves.

7
8 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
9 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
10 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 13**

2 **Tapes and Transcripts (If Needed)**

3 Tape recordings of certain conversations have been admitted into evidence. A transcript of
4 the conversations has been prepared. The tape and not the transcript is the evidence, and therefore
5 the transcript is not in evidence. The transcript is to be used only as a guide in following the tape.
6 Your understanding of the tape, rather than the transcript, is to govern your deliberations.

7 The transcript is not evidence but merely aids to follow the voices on the tape and you are
8 bound by your own recollection of what you heard on the tape, and not what you read in the
9 transcript. If you detect any discrepancy between the transcript and the tape, you are to consider
10 as evidence only what you hear on the tape.

11 You will notice that a complete record of the trial and all of the testimony is being made
12 by the Court Reporter; but you should not expect to have typewritten transcripts of the trial
13 available to you during your deliberations. Should you need to rehear testimony in your
14 deliberations, the Court will make it available by other means.

15
16 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 9–10 (D.S.C.
17 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 14**

2 **Voluntariness of Statements (If Needed)**

3 You have heard that witnesses made statements to law enforcement officials. Whether such
4 a statement was voluntarily given, and, if so, what weight to give it, is entirely up to you based on
5 the totality of the circumstances. In other words, these are questions of fact that are up to a jury to
6 decide.

7
8 Authority: *United States v. Kenyada Jaqu*, No. 3:19-cr-00302-JMC, Doc. No. 233, at 6 (D.S.C.
9 Oct. 21, 2020).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 15**

2 **Other Acts of Defendant (If Needed)**

3 You have heard evidence that the defendant committed certain acts that may be similar to
4 acts charged in the Second Superseding Indictment. You may not consider this evidence in
5 deciding if the defendant committed the acts charged in the indictment. However, you may
6 consider this evidence for other, very limited purposes, such as the following:

- 7 - To prove that the defendant had a motive or the opportunity to commit a crime charged in
8 the indictment;
- 9
- 10 - To prove that the defendant had the state of mind or the intent necessary to commit a crime
11 charged in the indictment;
- 12
- 13 - To prove that the defendant acted according to a plan or in preparation to commit a crime
14 charged in the indictment;
- 15
- 16 - To prove that the defendant knew what he was doing when he committed a crime charged
17 in the indictment;
- 18
- 19 - To prove the defendant's identity;
- 20
- 21 - To prove that the defendant did not commit a crime charged in the indictment by mistake
22 or accident.

23

24 Do not conclude from this evidence that the defendant has bad character in general or that
25 because the defendant may have committed other similar acts that it is more likely that he
26 committed the crime with which he is currently charged.

27

28 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
29 *South Carolina*, §VII(BB) (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 16**

2 **Defendant's Testimony**

3 **If the defendant does not testify:**

4 The defendant has a right not to testify, and the fact that the defendant did not testify must
5 not be considered by you in any way, or even discussed, in arriving at your verdict. The defendant
6 does not have to prove any evidence whatsoever.

7 **If the defendant testifies:**

8 If a defendant elects to take the witness stand and testify in his own defense, as the
9 defendant has done in this case, then he becomes as any other witness, and you the jury must
10 determine his credibility and give his testimony such credence and belief as you may think it
11 deserves. You should judge and determine the defendant's believability as you would any other
12 witness in this case. When an accused voluntarily takes the stand, and fails to explain incriminating
13 circumstances, you may consider that with all the other circumstances in reaching your conclusion
14 as to guilt or innocence. A fabricated explanation naturally and properly gives rise to an inference
15 of guilty knowledge.

16
17 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
18 *South Carolina*, § Final Instructions, I (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 17**

2 **False Exculpatory Statements (If Needed)**

3 Statements knowingly and voluntarily made by the defendant upon being informed that a
4 crime had been committed or upon being accused of a criminal charge may be considered by the
5 jury.

6 When a defendant voluntarily and intentionally offers an explanation or voluntarily makes
7 some statement tending to show his innocence and it is later shown that the defendant knew that
8 this statement or explanation was false, the jury may consider this as showing a consciousness of
9 guilt on the part of a defendant. It is ordinarily reasonable to infer that an innocent person does
10 not usually find it necessary to invent or fabricate an explanation or statement tending to establish
11 his innocence.

12 Whether or not evidence as to a defendant's explanation or statement points to a
13 consciousness of guilt on his part and the significance, if any, to be attached to any such evidence,
14 are matters exclusively within the province of the jury since you are the sole judges of the facts of
15 this case.

16 In your evaluation of evidence of an exculpatory statement shown to be false, you may
17 consider that there may be reasons—fully consistent with innocence—that could cause a person to
18 give a false statement showing that he did not commit a crime. Fear of law enforcement, reluctance
19 to become involved, and simple mistake may cause a person who has committed no crime to give
20 such a statement or explanation.

21
22 Adapted From: *United States v. Cogdell*, 844 F.2d 179, 181 (4th Cir. 1988), *abrogated on other*
23 *grounds by Brogan v. United States*, 522 U.S. 398 (1998) (quoting 1 E. Devitt, C. Blackmar & M.
24 Wolff, *Federal Jury Practice and Instructions* § 15.12 (3d ed. 1987)).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 18**

2 **Admissions or Statements by Defendant (If Needed)**

3 A defendant's earlier statement or other conduct admitting some fact against his interest
4 may be considered as evidence if the statement or conduct was knowingly made or done. Any such
5 statement or conduct may also be considered for purposes of judging the credibility of the
6 defendant as a witness.

7 “Knowingly” means a statement or act was made or done voluntarily and intentionally and
8 not because of mistake or accident or other innocent reason.

9 If you find that the defendant made a statement pertinent to the matter under inquiry, and
10 that the statement was contrary to the proven facts, and that the defendant did so willingly and
11 with knowledge of the falsity, you are at liberty to consider that circumstance as evidence of the
12 defendant's guilty conscience regarding the matter under inquiry.

13 What is pertinent and whether it was contrary to proven facts or done willingly and with
14 knowledge, or whether you consider it or not, is for you as triers of the facts to determine from all
15 the evidence before you.

16
17 Adapted From: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District*
18 *of South Carolina*, § VII(A) (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 19**

2 **Multiple Counts**

3 A separate crime or offense is charged in each count of the indictment. Each charge, and
4 the evidence pertaining to it, should be considered separately.

5 You must consider each count and the evidence relating to it separate and apart from every
6 other count. You must return a separate verdict as to each count. Your verdict on any count should
7 not control your verdict on any other count.

8
9 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 12 (D.S.C.
10 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 20**

2 **Proof May Be Disjunctive**

3 You might notice when I review the Second Superseding Indictment that it uses the word
4 “and” in describing the charges, but in my instructions, I tell you that the Government need only
5 prove one thing “or” the other thing. Do not be confused by this—just go by the instructions that
6 I give you. When the indictment uses the word “and,” I instruct you to read it as if it said “and/or.”

7
8 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 12 (D.S.C.
9 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 21**

2 **On or About**

3 The Second Superseding Indictment alleges that certain illegal activity happened on or
4 about a certain date, dates, or time frame. The Government need not prove with certainty the exact
5 date of the alleged offenses. It is sufficient if the illegal activity happened during a period of time
6 reasonably near the date alleged in the indictment.

7
8 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 13 (D.S.C.
9 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 22**

2 **Possible Punishment**

3 The question of possible punishment should not concern you. If the defendant is found
4 guilty, it then becomes my responsibility, as the judge, to impose an appropriate sentence. Your
5 function is to weigh the evidence and determine if the Government has proved that the defendant
6 is guilty beyond a reasonable doubt. You cannot allow a consideration of possible punishment to
7 influence your verdict in any way.

8
9 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
10 *South Carolina*, § VII(W) (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 23**

2 **Count One – Conspiracy to Commit Wire Fraud and Bank Fraud**

3 I will now discuss the elements of Count One with you, which alleges that from a time
4 beginning no later than July 2011, and continuing until at least October 2021, in the District of
5 South Carolina, the defendant, RUSSELL LUCIUS LAFFITTE, and others, knowingly and
6 intentionally combined, conspired, and agreed to:

- 7 a. knowingly devise a scheme and artifice to defraud and to obtain money and property
8 by means of false and fraudulent pretenses, representations, and promises, and transmit
9 and cause to be transmitted by means of wire, radio, or television communication in
10 interstate commerce, writings, signals, pictures or sounds for the purpose of executing
11 the scheme and artifice, in violation of Title 18, United States Code, Section 1343; and
12 b. knowingly execute and attempt to execute a scheme and artifice to obtain property held
13 by Palmetto State Bank, a financial institution insured by the FDIC, and obtain the
14 moneys, funds, credits, assets, securities, and other property owned by and under the
15 custody and control of PSB, by means of materially false and fraudulent pretenses,
16 representations and promises and failing to disclose material information and
17 fraudulently concealing material information, in violation of Title 18, United States
18 Code, Section 1344(2).

19 Count One charges that the object of the conspiracy was for the defendant, RUSSELL
20 LUCIUS LAFFITTE, and the Bank Customer to obtain money and property by means of false and
21 fraudulent pretenses, representations, and promises, and to defraud the Bank Customer's personal
22 injury clients.

23 Count One alleges that in furtherance of the conspiracy, the defendant, RUSSELL LUCIUS

1 LAFFITTE, committed the following overt acts in furtherance of the conspiracy:

a. On or about December 21, 2011, RUSSELL LUCIUS LAFFITTE negotiated and distributed, and caused to be negotiated and distributed, checks for \$309,581.46 and

\$325,000.00, funds belonging to H.P.Y. and N.T., as directed by the Bank Customer;

b. On or about August 20, 2012, and continuing through September 4, 2012, RUSSELL

LUCIUS LAFFITTE negotiated and distributed, and caused to be negotiated and

distributed, a check for \$25,245.06, funds belonging to N.T., as directed by the Bank
Customer:

c. On or about February 8, 2013, RUSSELL LUCIUS LAFETTE negotiated and

distributed, and caused to be negotiated and distributed, \$151,726.05 to H.P., at the Bank Customer's direction, knowing that the money belonged to the Estate of D.B.

and/or the Estate's beneficiaries.

Title 18, United States Code, Section 1349 makes it a crime to conspire with someone else to commit wire fraud or bank fraud.

Before we discuss bank fraud and wire fraud, I am going to tell you about the law of

16 conspiracy generally

Conspiracy Generally

A conspiracy is an agreement between two or more persons to join together to accomplish

¹⁹ some unlawful purpose. It is a kind of partnership in crime in which each member becomes the

²⁰ agent of every other member. The Government must prove three elements, each beyond a

²¹ reasonable doubt, to establish a conspiracy:

First, that two or more people entered into a conspiracy, agreement, or understanding to

23 commit an unlawful act:

1 Second, that at some time during the existence or life of the conspiracy, agreement, or
2 understanding, the defendant knew the unlawful purpose of the agreement; and

3 Third, that the defendant joined in the agreement willfully, with the intent to further the
4 unlawful purpose.

5 The Government must prove that the conspiracy came into existence during or reasonably
6 near the period of time charged in the Second Superseding Indictment and that the defendant
7 knowingly joined in the conspiracy within or reasonably near the same time period.

8 A conspiracy may exist even if a conspirator does not agree to commit or facilitate each
9 and every part of the substantive offense. The partners in a criminal plan must agree to pursue the
10 same criminal objective and may divide up the work, yet each is responsible for the acts of each
11 other.

12 You may find that the defendant was a member of the conspiracy only from the evidence
13 presented that relates to his own conduct, acts, or statements made in connection with the
14 conspiracy.

15 The essence of the crime of conspiracy is an agreement to commit a criminal act. But there
16 does not have to be evidence that the agreement was specific or explicit. By its very nature, a
17 conspiracy is clandestine and covert, thereby frequently resulting in little direct evidence of such
18 an agreement. Therefore, the Government may prove a conspiracy by direct or circumstantial
19 evidence. Circumstantial evidence tending to prove a conspiracy may consist of a defendant's
20 relationships with other members of the conspiracy, the length of this association, their attitude
21 and conduct, and the nature of the conspiracy.

1 Because the essence of a conspiracy offense is the making of the agreement itself, it is not
2 necessary for the Government to prove that the conspirators actually succeeded in accomplishing
3 their unlawful plan.

4 One may be a member of a conspiracy without knowing the full scope of the conspiracy,
5 or all of its members, and without taking part in the full range of its activities or over the whole
6 period of its existence. The conspiracy does not need a discrete, identifiable organizational
7 structure. The fact that a conspiracy is loosely-knit, haphazard, or ill-conceived does not render it
8 any less a conspiracy. The Government need not prove that a defendant knew the particulars of
9 the conspiracy or all of the coconspirators. It is sufficient if he played only a minor part in the
10 conspiracy. Thus, a variety of conduct can constitute participation in a conspiracy. Moreover, a
11 member may change his role in the conspiracy.

12 Once it has been shown that a conspiracy exists, the evidence need only establish a slight
13 connection between a defendant and the conspiracy. The Government must produce evidence to
14 prove his connection to the conspiracy beyond a reasonable doubt, but the connection itself may
15 be slight, because he does not need to know all of his coconspirators, understand the reach of the
16 conspiracy, participate in all the enterprises of the conspiracy, or have been a member of the
17 conspiracy from its beginning.

18 A conspirator must intend to further an endeavor that, if completed, would be a federal
19 crime. It is enough that he adopts the goal of furthering or facilitating the criminal endeavor
20 through participation. He may do so in any number of ways without agreeing to undertake all of
21 the acts necessary for the crime's completion. One can be a conspirator by agreeing to facilitate
22 only some of the acts leading to the criminal objective.

1 Along with other evidence, the statements and actions of an alleged coconspirator may be
2 considered in determining the existence of the conspiracy. Evidence has been received in this case
3 that a person (or persons) alleged in Count One to be a coconspirator of the defendant has done or
4 said things during the existence or life of the alleged conspiracy in order to further or advance their
5 goals. Such acts and statements of these other individuals may be considered by you in determining
6 whether or not the Government has proven the charges in Count One against the defendant on trial
7 here.

8 Since these acts may have been performed and these statements may have been made
9 outside the presence of the defendant and even done or said without the defendant's knowledge,
10 you should examine these acts or statements with particular care before considering them against
11 a defendant who did not do the particular act or make the particular statement.

12 The Government need not prove that the alleged conspirators entered into any formal
13 agreement, or that they directly stated between or among themselves all the details of the
14 agreement. The Government need not prove that all of the details of the agreement alleged in the
15 Second Superseding Indictment were actually agreed upon or carried out. The Government need
16 only prove that the defendant and at least one other person were members of the conspiracy.
17 Finally, the Government need not prove that the alleged conspirators actually accomplished the
18 unlawful objective of their agreement.

19 As I stated previously, Count One charges the defendant with conspiring to commit wire
20 fraud or bank fraud. Under the law, participating in a conspiracy to commit a crime is an entirely
21 separate and distinct charge from the actual violation of the substantive charge that may be the
22 object of the conspiracy. Therefore, all of the underlying elements of substantive participation in

1 an act of wire fraud or bank fraud need not be met in order for you to find that there was a
2 conspiracy to commit wire fraud or bank fraud as charged in the Second Superseding Indictment.

3 In a moment, I will instruct you on the elements of wire fraud and bank fraud. You should
4 consider these elements in determining whether the defendant knowingly and intentionally
5 conspired to commit wire and bank fraud. As I have explained to you, however, the Government
6 need not prove each of these underlying elements to prove that the defendant conspired to commit
7 wire and bank fraud as charged in Count One.

8 Additionally, the Government need not prove a conspiracy to commit both wire fraud and
9 bank fraud. If the elements for either are proven as the object of a conspiracy, it is sufficient to
10 sustain a conviction on Count One.

Pinkerton Liability for Substantive Offenses Committed By Others

Finally, I instruct you that a defendant is responsible for offenses committed by his or her fellow conspirators if he was a member of the conspiracy when the offense was committed and if the offense was committed in furtherance of and as a foreseeable consequence of the conspiracy.

15 To hold a coconspirator criminally liable for acts of other members of the conspiracy, the
16 act must be done in furtherance of the conspiracy and be reasonably foreseeable as a necessary or
17 natural consequence of the conspiracy. To be reasonably foreseeable to another member of the
18 criminal organization, and thus to hold a coconspirator criminally liable, acts of a coconspirator
19 must fall within the scope of the agreement between the specific individual and the coconspirator.

20 Therefore, if you find that the Government has proven the defendant guilty of conspiracy
21 as charged in Count One of the Second Superseding Indictment, and if you find beyond a
22 reasonable doubt that while the defendant was a member of the conspiracy, one or more of the
23 defendant's fellow coconspirators committed the offenses in Count Two and/or Count Three in

1 furtherance of, and as a foreseeable consequence of, that conspiracy, then you should find the
2 defendant guilty of Count Two and/or Count Three.

3
4 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
5 *South Carolina*, § 18 U.S.C. §371: *Pinkerton Liability* (2020 Online Edition) (citing numerous
6 cases); 2 Fed. Jury Prac. & Instr. § 31.06 (6th ed.); *United States v. Aramony*, 88 F.3d 1369, 1379
7 (4th Cir. 1996) (approving *Pinkerton* instruction in fraud case).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 24**

2 **Count Two – Bank Fraud**

3 Count Two of the Second Superseding Indictment charges the defendant with Bank Fraud
4 and Aiding and Abetting Bank Fraud.

5 Count Two alleges that on or about September 13, 2013, in the District of South Carolina,
6 the defendant, RUSSELL LUCIUS LAFFITTE, with the Bank Customer and others known and
7 unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice
8 to obtain money and funds under the custody and control of Palmetto State Bank, an FDIC-insured
9 financial institution, by means of false and fraudulent pretenses, representations and promises, and
10 aided and abetted the Bank Customer, by negotiating and distributing a check totaling \$101,369.49
11 to H.P., knowing that the funds belonged to the Estate of D.B. and/or the Estate's beneficiaries.

12 Title 18, United States Code, Section 1344(2) makes it a crime to commit bank fraud. To
13 establish bank fraud, the Government must prove the following three elements beyond a
14 reasonable doubt:

15 First, that the defendant knowingly executed, or attempted to execute, a scheme or artifice
16 to obtain any of the money or funds under the custody or control of a financial institution by false
17 or fraudulent pretenses, representations, or promises;

18 Second, that the defendant did so with intent to defraud; and

19 Third, that the financial institution was then federally insured.

20 The words "scheme or artifice" include any plan or course of action intended to deceive or
21 cheat others.

22 "To defraud" means wronging one in his property rights by dishonest methods or schemes.
23 It usually signifies the deprivation of something by trick, deceit, chicanery, or overreaching.

1 A “scheme or artifice to obtain” means to pursue any plan or course of action intended to
2 indirectly obtain assets of a financial institution by false or fraudulent pretenses, representations,
3 or promises. A statement or representation is false or fraudulent if known to be untrue or made
4 with reckless indifference as to the truth or falsity and made or caused to be made with the intent
5 to deceive or defraud. A statement or representation is also false or fraudulent when it constitutes
6 a half truth, or effectively omits or conceals a material fact, provided it is made with intent to
7 defraud. To act with “intent to defraud” means to act willfully and with the specific intent to
8 deceive or cheat for the purpose of either causing some financial loss to another or bringing about
9 some financial gain to oneself.

10 The Government must prove that the false or fraudulent pretenses, representations, or
11 promises were material. A statement is material if it has a natural tendency to influence, or is
12 capable of influencing, the decision-making body to which it was addressed. It is irrelevant
13 whether the false statement actually influenced or affected the decision-making process of the fact-
14 finding body. A false statement’s capacity to influence must be measured at the point in time that
15 the statement was made. In other words, it concerns what a reasonable financial institution would
16 want to know in negotiating a particular transaction.

17 A “financial institution,” as used in the bank fraud charges, means an insured depository
18 institution, to include a bank insured by the Federal Deposit Insurance Corporation. The
19 Government need not prove that the financial institution was the immediate victim, or that the
20 institution suffered an actual loss. It is sufficient if the Government shows that the financial
21 institution was exposed to an actual or potential risk of loss.

22
23 Authority: *United States v. Quinae Stephens*, No. 4:21-cr-651-SAL, Doc. No. 148 at 19–25 (D.S.C.
24 Apr. 7, 2022); *United States v. Robertson*, 856 F. App'x 432 (4th Cir. 2021) (unpublished)
25 (affirming jury trial that included charges of bank fraud and wire fraud); Eric Wm. Ruschky,

¹ *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina*, § 18 U.S.C.
² § 1344 (2020 Online Edition); O'Malley, Grenig & Lee, *Fed. Jury Prac. & Instr.* § 47.11 (6th ed.).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 25**

2 **Count Three – Wire Fraud**

3 Count Three of the Second Superseding Indictment charges the defendant with Wire Fraud
4 and Aiding and Abetting Wire Fraud.

5 Count Three alleges that on or about September 13, 2013, in the District of South Carolina,
6 the defendant, RUSSELL LUCIUS LAFFITTE, with the Bank Customer and others known and
7 unknown to the Grand Jury, having devised a scheme and artifice to defraud and to obtain money
8 and property by means of false and fraudulent pretenses, representations, and promises, transmitted
9 and caused to be transmitted by means of wire in interstate commerce, writings, signs, and signals,
10 for the purpose of executing such a scheme and artifice, in that he obtained funds, as personal
11 representative, belonging to the Estate of D.B. and/or the Estate's beneficiaries, and distributed
12 \$33,789.83 to the Bank Customer's personal account, affecting a financial institution.

13 Title 18, United States Code, Section 1343 makes it a crime to commit wire fraud. To
14 establish wire fraud, the Government must prove the following three elements beyond a reasonable
15 doubt:

16 First, that the defendant devised or intended to devise a scheme to defraud or for obtaining
17 money or property by means of false or fraudulent pretenses, representations, or promises that
18 were material;

19 Second, that, for the purpose of executing the scheme, the defendant transmitted or caused
20 to be transmitted by means of wire communication in interstate commerce, writings, signs, or
21 signals; and

22 Third, the scheme affected a financial institution.

23 *Scheme and Artifice to Defraud or Obtain Money or Funds*

1 The words “scheme and artifice” include any plan or course of action intended to deceive
2 others and to obtain by either false or fraudulent pretenses, representations, or promises, money
3 from persons who are so deceived. A scheme or artifice to defraud may describe a departure from
4 fundamental honesty, moral uprightness, or fair play and candid business dealings in the general
5 life of the community. There must be proof of a misrepresentation, false statement, or omission
6 calculated to deceive a person of ordinary prudence and comprehension.

7 A statement or representation is false or fraudulent if known to be untrue or made with
8 reckless indifference as to the truth or falsity and made or caused to be made with the intent to
9 deceive or defraud. A statement or representation is also false or fraudulent when it constitutes a
10 half truth, or effectively omits or conceals a material fact, provided it is made with intent to
11 defraud.

12 A scheme to defraud requires that the Government prove that the defendant acted with the
13 specific intent to deceive or cheat for the purpose of getting financial gain for oneself or causing
14 financial loss to another. Thus, the Government must prove that the defendant intended to deceive
15 someone through the scheme. A scheme to defraud can be shown by deceptive acts or contrivances
16 intended to hide information, mislead, avoid suspicion, or avert further inquiry into a material
17 matter, or by active concealment of material information.

18 A statement is material if it has a natural tendency to influence, or is capable of influencing,
19 the decision-making body to which it was addressed. It is irrelevant whether the false statement
20 actually influenced or affected the decision-making process of the agency or fact-finding body. A
21 false statement’s capacity to influence must be measured at the point in time that the statement
22 was made.

1 It is not necessary that the Government prove all of the details alleged in the indictment
2 concerning the precise nature and purpose of the scheme, or that the material sent by wire was
3 itself false or fraudulent, or that the alleged scheme actually succeeded in defrauding anyone, or
4 that the use of the wire was intended as the specific or exclusive means of accomplishing the
5 alleged fraud.

6 What must be proved beyond a reasonable doubt is that the defendant knowingly devised
7 or intended to devise a scheme to defraud that was substantially the same as the one alleged in the
8 indictment, and that the use of the wire was closely related to the scheme, in that the defendant
9 either wired something or caused it to be wired for the purpose of executing or carrying out the
10 scheme.

11 The Government must prove that the defendant knew that his conduct as a participant in
12 the scheme was calculated to deceive and, nonetheless, he associated himself with the alleged
13 fraudulent scheme for the purpose of causing some loss to another.

14 The Government does not have to prove precisely when the intent to defraud first
15 materialized.

16 *Wire Communication in Interstate Commerce*

17 The phrase “transmitted by means of wire communication in interstate commerce” means
18 to send from one state to another by means of telephone or telegraph lines, which includes the
19 internet.

20 It is not necessary for the defendant to be directly or personally involved in the interstate
21 transmission, as long as such transmission was reasonably foreseeable in the execution of the
22 alleged scheme in which the defendant is accused of participating. This does not mean that the
23 defendant must have specifically authorized others to make the transmission. When one does an

1 act with knowledge that the use of an interstate transmission will follow in the ordinary course of
2 business or where such use can reasonably be foreseen, even though not actually intended, then he
3 causes the interstate transmission to be made.

4 The interstate transmission need not in and of itself be fraudulent to constitute an offense
5 under this statute. The material that was transmitted may be totally innocent. The use of the
6 interstate transmission does not need to be an essential part of the fraudulent scheme.

7 *Financial Institution*

8 A “financial institution” includes an insured deposit institution, to include a bank insured
9 by the Federal Deposit Insurance Corporation. A financial institution is affected only if the
10 institution itself was victimized by the fraud, as opposed to the scheme’s mere utilization of the
11 financial institution in the transfer of funds.

12 Authority: *United States v. Quinae Stephens*, No. 4:21-cr-651-SAL, Doc. No. 148 at 19–25 (D.S.C.
13 Apr. 7, 2022); *United States v. Robertson*, 856 F. App’x 432 (4th Cir. 2021) (unpublished)
14 (affirming jury trial that included charges of bank fraud and wire fraud); Eric Wm. Ruschky,
15 *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina*, § 18 U.S.C.
16 § 1343 (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 26**

2 **Counts Four, Five, and Six – Misapplication of Bank Funds**

3 Counts Four, Five, and Six of the Second Superseding Indictment charge the defendant
4 with Misapplication of Bank Funds and Aiding and Abetting the Misapplication of Bank Funds.
5 Because these three counts charge violations of the same statutes, they are being grouped together
6 to simplify these instructions. You must consider each count and the evidence pertaining to each
7 count separately.

8 Count Four of the Second Superseding Indictment charges that on or about October 28,
9 2021, in the District of South Carolina, the defendant, RUSSELL LUCIUS LAFFITTE, being an
10 officer, director, agent, and employee of PSB, a financial institution insured by the FDIC, with the
11 intent to injure and defraud PSB, willfully misapplied, abstracted, and purloined moneys, funds,
12 and credits entrusted to the custody and care of PSB, in that the defendant, RUSSELL LUCIUS
13 LAFFITTE, distributed \$680,000.00 of PSB funds to the Law Firm, without notice to or consent
14 from the PSB Board of Directors, knowing that he had fraudulently transferred the money to the
15 Bank Customer.

16 Count Five of the Second Superseding Indictment charges that on or about July 15, 2021,
17 and continuing until August 18, 2021, in the District of South Carolina, the defendant, RUSSELL
18 LUCIUS LAFFITTE, being an officer, director, agent, and employee of PSB, a financial institution
19 insured by the FDIC, with the intent to injure and defraud PSB, willfully misapplied, abstracted,
20 and purloined moneys, funds, and credits entrusted to the custody and care of PSB, in that the
21 defendant, RUSSELL LUCIUS LAFFITTE, caused PSB to fund a \$750,000.00 commercial loan
22 to the Bank Customer for beach house renovations and expenses, with preferential lending terms,
23 including insufficient collateral, knowing that the loan was essentially unsecured and that loan

1 proceeds would be and were used for other purposes, namely to pay Attorney 1 and to cover
2 hundreds of thousands of dollars in overdraft on the Bank Customer's personal account at PSB.

3 Count Six of the Second Superseding Indictment charges that on or about February 20,
4 2015, in the District of South Carolina, the defendant, RUSSELL LUCUIS LAFFITTE, being an
5 officer, director, agent, and employee of PSB, a financial institution insured by the FDIC, with the
6 intent to injure and defraud PSB, willfully misapplied, abstracted, and purloined moneys, funds,
7 and credits entrusted to the custody and care of PSB, in that the defendant, RUSSELL LUCIUS
8 LAFFITTE, caused PSB to fund a \$500,000.00 line of credit to the Bank Customer for "farming,"
9 and thereafter issued a \$284,787.52 cashier's check knowing that the loan proceeds would be and
10 were used for other purposes, namely to pay off loans previously extended from H.P.'s
11 conservatorship account.

12 Title 18, United States Code, Sections 656 makes it a crime to misapply bank funds. To
13 find the defendant guilty of willful misapplication of bank funds as charged in Counts Four, Five,
14 and Six, the Government must prove the following five essential elements beyond a reasonable
15 doubt:

16 First, that the defendant was an officer, agent, or employee of or connected in any capacity
17 with Palmetto State Bank at the time alleged in the indictment;

18 Second, that the accounts of the bank were federally insured at the time alleged in the
19 indictment;

20 Third, that the defendant misapplied, abstracted, or purloined more than \$1,000.00 in
21 moneys, funds, or credits belonging to, or entrusted to the care of, the bank;

22 Fourth, that the defendant did so willfully; and

1 Fifth, that the defendant did so with the intent to inflict financial injury to the bank or to
2 defraud the bank.

3 To “abstract” means to take or withdraw from the possession and control of the bank the
4 moneys and funds alleged to be so abstracted, without the knowledge and consent of the bank, and
5 with the intent to injure or defraud the bank.

6 To “misapply” a bank’s money or property means the willful conversion or taking by a
7 bank employee of such money or property for his own use or benefit, or the use and benefit of
8 another, whether or not such money or property has been entrusted to his care, and with intent to
9 defraud the bank. It is not necessary that the defendant be in actual possession of the money or
10 property by virtue of a trust committed to him. It is a misapplication of the bank’s funds to approve
11 loans and transactions in violation of state law or the bank’s policies.

12 “Intent to injure or defraud” can be established by proving that the defendant acted in
13 reckless disregard of the bank’s interest. To act with intent to injure or defraud means to act with
14 intent to deceive or cheat, for the purpose of causing a financial loss to the bank, although it is not
15 necessary that the bank has suffered an actual loss, or to bring financial gain or benefit to oneself.
16 Subsequent restitution of the funds may be relevant on the issue of intent, but it is not a defense.
17 The crime is complete when the misapplication occurs.

18 Intent to injure and intent to defraud are not the same. “Intent to injure” is met when the
19 officer engaged in acts, the natural tendency of which would be to injure the bank. The term
20 “injure” includes only pecuniary loss to the bank. Damage to the bank’s reputation is too indirect
21 and too speculative to constitute an injury. However, exposing the bank and its officials to potential
22 government sanction for the circumvention of regulatory requirements is a harm. Avoidance of
23 regulations designed to promote the healthy operation of a financial institution poses a harm to it.

1 The evidence does not have to show that the defendant intended to deprive the bank of its
2 property permanently or that the bank actually lost money as a result of the misapplication of
3 funds. Nor is proof of personal gain necessary. It is sufficient that the defendant at least temporarily
4 deprived the bank of the possession, control, or use of the funds.

5 “Intent to defraud” means to take financial advantage of a confidential relationship and
6 does not require any intent to injure the bank.

7

8 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
9 *South Carolina*, § 18 U.S.C. § 656 (2020 Online Edition) (citing numerous cases); *United States*
10 *v. Parekh*, 926 F.2d 402, 408 (5th Cir. 1991); *United States v. Bruun*, 809 F.2d 397, 408 (7th Cir.
11 1987); *United States v. Vickers*, 755 F.2d 933, 1985 WL 12841 (6th Cir. 1985) (Table opinion);
12 *United States v. Mohr*, 728 F.2d 1132, 1134 (8th Cir. 1984); *United States v. Duncan*, 598 F.2d
13 839, 858 (4th Cir. 1979).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 27

Aiding and Abetting

Counts Two through Six, for Bank Fraud, Wire Fraud, and Misapplication of Bank Funds, also charge the defendant with violating Title 18, United States Code, Section 2, which makes it a crime to aid and abet another person to commit a crime.

The guilt of an accused in a criminal case may be established without proof that he personally did every act constituting the offense alleged. The law recognizes that ordinarily anything a person can do for himself may also be accomplished by him through direction of another person as his agent, or by acting in concert with, or under the direction of another person or persons in a joint effort or enterprise.

11 For you to find the defendant guilty of the crimes charged in Counts Two through Six of
12 the Second Superseding Indictment under the theory of aiding and abetting, the Government must
13 prove the following four elements, each beyond a reasonable doubt:

14 First, that the crime charged was in fact committed by someone other than the defendant;

15 Second, that the defendant participated in the criminal venture as something that he wished
16 to bring about;

17 Third, that the defendant associated himself with the criminal venture knowingly and
18 voluntarily; and

19 Fourth, that the defendant sought by his actions to make the criminal venture succeed.

Simply put, aiding and abetting means to assist the perpetrator of the crime. One who aids, abets, counsels, commands, induces, or procures the commission of an act is as responsible for that act as if he committed it directly.

1 To prove association, the Government must show that the defendant shared in the criminal
2 intent of the person or persons committing the crime. This requires evidence that the defendant
3 was aware of their criminal intent and the unlawful nature of the criminal acts.

4 Evidence that a defendant merely brought about the arrangement that made the criminal
5 act possible does not alone support a conclusion that the defendant was aware of the criminal
6 nature of the act.

7 The Government is not required to prove that the defendant participated in every stage of
8 an illegal venture, but the Government is required to prove beyond a reasonable doubt that the
9 defendant participated at some stage and that the participation was accompanied by knowledge of
10 the result and intent to bring about that result.

11 There must be evidence to establish that the defendant engaged in some affirmative
12 conduct, that is, that the defendant committed an act designed to aid in the success of the venture,
13 and there must be evidence to establish that the defendant shared in the criminal intent of the
14 person the defendant was aiding and abetting.

15 It is not necessary that the person who was aided and assisted be tried and convicted of the
16 offense. It is not necessary that the Government prove the actual identity of the perpetrator of the
17 crime. The Government must prove that the underlying crime was committed by some person and
18 that the defendant aided and abetted that person.

19 If two persons act in concert with a common purpose or design to commit an unlawful act,
20 then the act of one of them in furtherance of the unlawful act is in law considered the act of the
21 other.

22 The Government must prove that the defendant counseled and advised the commission of
23 the crime, and that the counsel and advice influenced the perpetration of the crime. There is no

1 requirement that fixes a time limit within which the crime must be committed. If the person who
2 was assisted or induced commits the crime he was assisted or induced to commit, then the person
3 who assisted or induced him is guilty of aiding and abetting.

4 The Government must prove that the defendant participated in the crime charged.

5
6 Authority: *United States v. Quinae Stephens*, No. 4:21-cr-651-SAL, Doc. No. 148 at 33–35 (D.S.C.
7 Apr. 7, 2022); *United States v. Lance Hardiman*, No. 4:17-cr-00469-RBH, Doc. No. 277 at 26–29
8 (D.S.C. Nov. 29, 2018); Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases*,
9 *District of South Carolina*, § 18 U.S.C. § 2 (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 28**

2 **Definitions**

3 Now I will define several terms that have been used in this charge:

4 To commit an act “intentionally” is to do so deliberately and not by accident.

5 To act “knowingly” is to act with knowledge of the facts that constitute the offense but not
6 necessarily with knowledge that the facts amount to illegal conduct. Expressed another way, an
7 act is done knowingly if the defendant is aware of the act and does not act through ignorance,
8 mistake, or accident. The Government is not required to prove that a defendant knew that his acts
9 or omissions were unlawful.

10 A person acts “willfully” if he acts intentionally and purposely and with the intent to do
11 something the law forbids, that is, with the bad purpose to disobey or to disregard the law. The
12 person need not be aware of the specific law or rule that his conduct may be violating. But he must
13 act with the intent to do something that the law forbids. A willful act is one undertaken with a bad
14 purpose. In other words, in order to establish a willful violation of a statute, the Government must
15 prove that the defendant acted with knowledge that his conduct was unlawful.

16

17 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
18 *South Carolina, §§ V.Q, V.T, V.FF (2020 Online Edition).*

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 29**

2 **Motive**

3 Intent and motive are different concepts and should never be confused. Motive is what
4 prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is
5 done or omitted.

6 Personal advancement and financial gain, for example, are two well-recognized motives
7 for much of human conduct. These motives may prompt one person to voluntary acts of good while
8 prompting another person to voluntary acts of crime.

9 Good motive alone is never a defense where the act done or omitted is a crime. The motive
10 of the defendant is, therefore, immaterial except insofar as evidence of motive may aid in the
11 determination of the state of mind or the intent of the defendant.

12
13 Adapted From: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District*
14 *of South Carolina*, § V.W (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 30**

2 **Proof of Knowledge or Intent**

3 The intent of a person or the knowledge that a person possesses at any given time may not
4 ordinarily be proved directly because there is no way of directly scrutinizing the workings of the
5 human mind. In determining the issue of what a person knew or what a person intended at a
6 particular time, you may consider any statements made or acts done by that person and all other
7 facts and circumstances received in evidence that may aid in your determination of that person's
8 knowledge or intent.

9 It is reasonable to infer that a person ordinarily intends the natural and probable
10 consequences of acts knowingly done or knowingly omitted. You may draw the inference that the
11 defendant intended all of the consequences that one standing in like circumstances and possessing
12 like knowledge should reasonably have expected to result from any act knowingly done or
13 knowingly omitted by the defendant. You are entitled to consider any such inference drawn in
14 determining whether or not the Government has proved beyond a reasonable doubt that the
15 defendant possessed the required criminal intent.

16
17 Adapted From: O'Malley, Grenig & Lee, *Fed. Jury Prac. & Instr.* § 17.07 (6th ed.); Eric Wm.
18 Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina*, § V.T
19 (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 31**

2 **Willful Blindness (If Needed)**

3 The element of knowledge may be satisfied by inferences drawn from proof that a
4 defendant deliberately closed his eyes to what would otherwise have been obvious to him. A
5 finding beyond a reasonable doubt of a conscious purpose to avoid enlightenment would permit
6 an inference of knowledge. Stated another way, a defendant's knowledge of a fact may be inferred
7 from willful blindness to the existence of a fact. A showing of negligence or mistake is not
8 sufficient to support a finding of willfulness or knowledge. It is entirely up to you as to whether
9 you find any deliberate closing of the eyes and inferences to be drawn from any such evidence.

10
11 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
12 *South Carolina*, § V.GG (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 32**

2 **Good Character (If Needed)**

3 When a defendant has offered evidence of good general reputation [for truth and veracity,
4 for honesty and integrity, as a law-abiding citizen], you should consider such evidence along with
5 all the other evidence in the case. Evidence of a defendant's reputation, inconsistent with those
6 traits of character ordinarily involved in the commission of the crime charged, may give rise to a
7 reasonable doubt, since you may think it improbable that a person of good character in respect to
8 those traits would commit such a crime.

9 You should always bear in mind however, that the law never imposes upon a defendant the
10 burden or duty of calling any witnesses or producing any evidence. Reputation of the defendant's
11 good character, when put in evidence, is a fact that you should consider with the other facts in the
12 case. That reputation for good character is a fact that, when considered in connection with all the
13 other evidence in the case, may, like other facts, generate a reasonable doubt.

14
15 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
16 *South Carolina* § VI.J (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 33**

2 **Good Faith**

3 The defendant has raised the defense of good faith. Good faith is a complete defense to the
4 charged offenses, because good faith on the part of the defendant is inconsistent with intent to
5 defraud. The term “good faith” has no precise definition, but it means, among other things, an
6 honest belief, a lack of malice, and the intent to perform all lawful obligations. A person who acts
7 on a belief or on an opinion honestly held is not punishable under the law merely because that
8 honest belief turns out to be incorrect or wrong. The burden is on the Government to prove
9 fraudulent intent and the lack of good faith beyond a reasonable doubt.

10 However, no amount of honest belief that an enterprise will eventually succeed can excuse
11 willful misrepresentations. You are instructed that if the defendant participated in a scheme to
12 defraud, then a belief by the defendant, if such belief existed, that ultimately everything would
13 work out so that no one would lose any money does not require a finding by you that the defendant
14 acted in good faith. If the defendant participated in the scheme for the purpose of causing some
15 financial or property loss to another, then no amount of honest belief on the part of the defendant
16 that the scheme would not cause a loss, would excuse fraudulent actions or false representations
17 by him. A defendant’s belief that the victim of the fraud will be paid in the future or will sustain
18 no economic loss is no defense to the crimes charged in the indictment. The intent to repay
19 eventually is not relevant to the question of guilt.

20
21 Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of*
22 *South Carolina*, §§ 18 U.S.C. § 1343; VI.K (2020 Online Edition).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 34**

2 **Duty to Deliberate**

3 When you retire to the jury room, you should first elect one from among you to serve as
4 your foreperson. The foreperson you select will preside over the deliberations and speak for the
5 jury here in court. When you retire to the jury room, you should discuss the case with your fellow
6 jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must
7 decide the case for yourself, but you should do so only after you have considered all the evidence,
8 discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not be
9 afraid to change your opinion if the discussion persuades you that you should. But do not come to
10 a decision simply because other jurors think it is right. It is important that you attempt to reach a
11 unanimous verdict but, of course, only if each of you can do so after having made your own
12 conscientious decision. Do not change an honest belief about the weight and effect of the evidence
13 simply to reach a verdict. Remember at all times that you are not partisans. You are judges – judges
14 of the facts. Your sole interest is to seek the truth from the evidence in the case.

15 You are to perform the duty of finding the facts without bias or prejudice as to any party.
16 This case is important to the Government, for the enforcement of criminal laws is a matter of prime
17 concern to the community. Equally, it is important to the defendant, who is charged with the
18 commission of serious crimes.

19 The fact that the prosecution is brought in the name of the United States of America entitles
20 the Government to no greater consideration than that accorded to any party to litigation. By the
21 same token, it is entitled to no less consideration. All parties, whether the Government or
22 individuals, stand as equals at the bar of justice.

23

1 Authority: United States District Court for the District of South Carolina, “Jury Instructions –
2 Preliminary and Boilerplate, Judge Richard Mark Gergel,” available at
3 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf;
4 *United States v. Kenyada Jaqu*, No. 3:19-cr-00302-JMC, Doc. No. 233, at 2–3 (D.S.C. Oct.
5 21, 2020).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 35**

2 **Note Taking**

3 Some of you have taken notes during the trial. Remember that the notes are for your own
4 personal use. They are not to be given or read to anyone else and they are not to be used in place
5 of your memory.

6
7 Authority: *United States v. Gabriel Ingram*, No. 0:18-cr-557-MGL, Doc. No. 1707 at 15 (D.S.C.
8 Aug. 19, 2022).

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 36**

2 **Consideration of Evidence**

3 Your verdict must be based solely on the evidence and on the law as I have given it to you
4 in these instructions. However, nothing that I have said or done is intended to suggest what your
5 verdict should be – that is entirely for you to decide. The arguments and statements of the attorneys
6 are not evidence. If you remember the facts differently from the way the attorneys have stated
7 them, you should base your decision on what you remember.

8
9 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
10 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
11 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.
12

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 37**

2 **Return of Verdict**

3 After you have reached unanimous agreement on a verdict, your foreperson will fill in the
4 form that has been given to you, sign and date it, and advise the marshal (or bailiff) outside your
5 door that you are ready to return to the courtroom.

6
7 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
8 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
9 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.

1 **GOVERNMENT'S PROPOSED INSTRUCTION NO. 38**

2 **Communicating with the Court**

3 If it becomes necessary during your deliberations to communicate with me, you may send
4 a note through the marshal (or bailiff), signed by your foreperson or by one or more members of
5 the jury. No member of the jury should ever attempt to communicate with me except by a signed
6 writing; and I will communicate with any member of the jury on anything concerning the case
7 only in writing, or orally here in open court. Remember that you are not to tell anyone – including
8 me – how the jury stands, numerically or otherwise, until after you have reached a unanimous
9 verdict or have been discharged.

10
11 Authority: United States District Court for the District of South Carolina, "Jury Instructions –
12 Preliminary and Boilerplate, Judge Richard Mark Gergel," available at
13 https://www.scd.uscourts.gov/Forms/Special_Instructions/Richard_Gergel_Special_Instructions.pdf.
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